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ABSTRACT

The document contains the new Part 200 of regulations for Chapter 853, a New York law governing special education services. The law allows students to be placed on the basis of handicapping conditions or on the basis of four criteria representing a pupil's specific educational need. The regulations are intended to expand upon definitions currently in existence, spell out board of education responsibilities, build flexibility and specificity into the referral process, and specify timelines for both parents and school districts. A continuum of services model is used as the programmatic basis. Separate sections of the regulations deal with the following areas: definitions; board of education responsibilities; the committee on the handicapped; procedures for referral, evaluation, individualized education program development, placement and review; procedural due process; continuum of services; program standards for programs in private schools and state operated or state supported schools; state assistance for the instruction of handicapped pupils; state reimbursement to private schools and special act school districts educating children with handicapping conditions who were previously enrolled; and reimbursement to certain state operated and state supported schools for blind, deaf, and severely handicapped children. (DB)

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DEPUTY COMMISSIONER FOR
ELEMENTARY, SECONDARY
AND CONTINUING EDUCATION

April, 1981

TO: Organizations and Individuals Concerned About Regulation of Education of Children with Handicapping Conditions

FROM: Robert R. Spillane, Deputy Commissioner Robert R. Spillane

SUBJECT: New Part 200 of the Regulations of the Commissioner of Education Effective July 1, 1982

ED214315

In 1976 the Legislature of the State of New York enacted Chapter 853. This law, along with Public Law 94-142, enacted by the United States Congress in 1975, has provided the framework for the system of delivering the special education services for pupils with handicapping conditions in New York State. Part 200 of the Commissioner's Regulations has been developed to implement the concepts contained in legislation, with particular emphasis on providing programs for children with handicapping conditions based on their individual needs. Several legislative actions, and State and Federal regulatory changes, have modified this system. As a last stage of implementation of these landmark statutes and their modifications, the Regents have enacted a new Part 200 of the Regulations of the Commissioner of Education which provides regulatory revisions based on the experience of the past five years.

Attached is a copy of the new Part 200 of the Regulations of the Commissioner of Education of the State of New York, promulgated by the Board of Regents at their April 24, 1981 meeting. At this meeting, the following two resolutions were enacted by the Board of Regents concerning these new Part 200 regulations:

> "VOTED that Part 200 of the Regulations of the Commissioner of Education be repealed and that a new Part 200 be added, as submitted, effective July 1, 1982; provided that new section 200.6 shall become effective only upon further action by the Board of Regents prior to July 1, 1982; and provided further that any school district may elect to implement all of the provisions of new Part 200 during the 1981-82 school year, and in such event shall so notify the Commissioner of Education witnin ten days after making such election, or may, with the prior approval of the Commissioner, implement selected provisions of new Part 200 during the 1981-82 school year."

EC141515

"VOTED that the State Education Department shall take action upon each request for approval to implement portions of new Part 200 of the Regulations of the Commissioner of Education during the 1981-82 school year within thirty days after the receipt of such request."

We believe the new Part 200 regulations represent an improvement over the current special education system in New York State. While maintaining the option for placing pupils based on handicapping conditions, the new regulations will also allow the option of placing pupils based on four important criteria which represent a pupil's specific individual needs. Thus, in situations where a category may not be relevant to educational needs, the child can still receive the most appropriate educational placement. The new regulations have clarified and expanded upon definitions currently spread throughout our existing regulations. For the first time, board of education responsibilities which are currently required are spelled out in regulation. Flexibility and specificity have been built into the referral process, and timelines for both parents and school districts have been specified and placed in logical order. A continuum of services model is used as the programmatic basis for the new regulations. Flexibility has been built into the delivery of services while the IEP Phase I has been restructured for the benefit of both the child and the parent.

Specific letters are being sent to a variety of educational organizations, providing them with information on how these regulations will affect them. Anyone wishing more information regarding approval to implement these regulations during the 1981-82 school year or seeking clarification on any specific issues related to the regulations should contact the Office for Education of Children with Handicapping Conditions at (518) 474-5548. We believe these regulations allow a sounder and more flexible approach for local school districts in educating pupils with handicapping conditions, strengthen the parents' role as a partner in decision-making regarding their child's program, and provide increased assurance that a pupil with handicapping conditions will receive an educational program commensurate with the individualized needs identified through the pupil's Individualized Education Program (IEP).

Implementation of these regulations will be assessed by the Education Department during 1981-82. A Department report will be reviewed by the Board of Regents in February, 1982. Public hearings will be held on implementation of the regulations in March, 1982. A timely notice will be provided to the field regarding the specific dates and locations of these hearings. The Department looks forward to working together with all interested parties to ensure the successful implementation of these new regulations.

Attachment

AMENDMENT TO REGULATIONS OF THE COMMISSIONER OF EDUCATION
Pursuant to Section 207 of the Education Law

Part 200 of the Regulations of the Commissioner of Education, is repealed and a new Part 200 is added, effective July 1, 1982, to read as follows; provided that new section 200.6 shall become effective only upon further action by the Board of Regents prior to July 1, 1982; and provided further that any school district may elect to implement all of the provisions of new Part 200 during the 1981-82 school year, and in such event shall so notify the Commissioner of Education within ten days after making such election, or may, with the prior approval of the Commissioner, implement selected provisions of new Part 200 during the 1981-82 school year.

Section 200.1 Definitions. As used in this Part: (a) Adaptive behavior means the effectiveness with which the individual copes with the natural and social demands of his environment.

(b) Adaptive physical education means a specially designed program of developmental activities, games, sports, and rhythms suited to the interests, capacities and limitations of pupils with handicapping conditions who may not safely or successfully engage in unrestricted participation in the activities of the regular physical education program.

(c) Annual review means an evaluation conducted at least annually by the committee on the handicapped of the status of each pupil with a handicapping condition and each child thought to be handicapped who resides within the school district for the purpose of recommending the continuation, modification or termination of the provision of special education programs and services for the pupil to the board of education.

(d) Approved private school means a private school which conforms with the requirements of federal and state laws and regulations governing the education of pupils with handicapping conditions, and which has been approved by the commissioner for the purpose of contracting with public schools for the instruction of pupils with handicapping conditions.

(e) Change in program means a change in any one of the program components of phase one of the individualized education program (IEP) of a pupil.

(f) Change in placement means a transfer of a pupil to or from a public school, BOCES, schools enumerated in articles 81, 85, 87, 88, or 89 of the Education Law, Chapter 566 of the Laws of 1967, or an approved private school.

(g) Class size means the maximum number of pupils who can receive instruction together in a special class or resource room program.

(h) Committee on the handicapped (COH) means a multidisciplinary team established in accordance with the provisions of section 4402 of the Education Law.

(i) Consent means:

(1) The parent has been fully informed in his or her dominant language or other mode of communication of all information relevant to the activity for which consent is sought and has been notified of the records of the pupil which will be released and to whom they will be released.

(2) The parent agrees in writing to the activity for which consent is sought.

(3) The parent is made aware that the consent is voluntary on the part of the parent and may be reconsidered at any time.

(j) Days mean school work days, except that during the months of July and August, days mean every day except Saturday, Sunday and legal holidays.

(k) Fiscal year means the period commencing on the first day of July in each year and ending on the thirtieth day of June next following.

(l) Full day session means a school day with not less than five hours of instruction time for pupils whose chronological ages are equivalent to those of pupils in grades K through 6 and not less than five and one half hours of instruction time for pupils whose chronological ages are equivalent to those of pupils in grades 7 through 12.

(m) Half day session means a morning or afternoon session with not less than two and one half hours of instruction time for pupils whose chronological ages are equivalent to those of pupils in grades K through 6 and not less than three hours of instruction time for pupils whose chronological ages are equivalent to those pupils in grades 7 through 12.

(n) Home and hospital instruction means special education provided on an individual basis for a handicapped pupil confined to the home, hospital or other institution because of a handicapping condition.

(o) Impartial hearing officer means an individual assigned by a board of education pursuant to Education Law 4404 (1) or by the commissioner in accordance with section 200.7 (c) (2) to hear an appeal and render a decision. An impartial hearing officer shall be independent, shall not be an officer, employee, or agent of the school district or of the Board of Cooperative Education Services of which such school district is a component or an employee of the education department, and shall not have participated in any manner in the formulation of the recommendation sought to be reviewed.

(p) Individualized education program (IEP) means a written plan which specifies the special education programs and services to be provided to meet the unique educational needs of a pupil with a handicapping condition.

(q) Independent evaluation means an individual evaluation of a pupil thought to be handicapped conducted by a person who is not employed by the public agency responsible for the education of the pupil.

(r) Individual evaluation means any procedures, tests or assessments used selectively with an individual child, including a physical examination in accordance with the provisions of section 904 of the Education Law, an individual psychological evaluation, social history and other suitable examinations and evaluations as may be necessary to determine whether a child is handicapped and the extent of his special education needs, but does not include basic tests administered to, or procedures used with, all pupils in a school grade or class.

(s) Individual psychological evaluation means a comprehensive process by which a New York State certified school psychologist or licensed psychologist uses a variety of psychological and educational techniques in the pupil's dominant language, to study and describe a pupil's developmental, learning, behavioral and other personality characteristics for the purpose of educational planning.

(t) Least restrictive environment means that placement of an individual handicapped pupil which:

(1) Provides the special education needed by the pupil.

(2) Provides for education of the pupil to the maximum extent appropriate with other pupils who are not handicapped.
(3) Is determined following consideration of the proximity of the placement to the pupil's place of residence.

(u) Medical services mean only evaluative and diagnostic services provided by a licensed physician to determine whether a child has a medically related handicapping condition which may result in the child's need for special education and related services.

(v) Notice means written statements in English and translated, when appropriate, into the dominant language or mode of communication of the parent's home which:
(1) describe the action proposed to be taken by the school district or the committee on the handicapped on behalf of a child thought to be handicapped,
(2) describe any other options considered and explain why the proposed action was selected,
(3) describe each evaluation, procedure, test, record, or report and any other factors upon which the proposed action was based.

(w) Occupational therapy means the functional evaluation of the client and the planning and utilization of a program of purposeful activities to develop or maintain adaptive skills, designed to achieve maximal physical and mental functioning of the patient in his daily life task.

(x) Other support services mean appropriate assistance provided by individuals who are certified and/or licensed to provide instruction, support or evaluation relative to a particular pupil with a handicapping condition and determined by the committee on the handicapped to be required for such pupil attending regular class programs or special education programs.

(y) Paraprofessional means a teacher aide or a teacher assistant as described in section 80.33 of regulations of the commissioner.

(z) Parent means a natural parent, or other person in legal parental relation, a legally appointed guardian or a surrogate parent appointed in accordance with these regulations.

(aa) Period means a minimum of 30 minutes of direct services provided to a pupil with a handicapping condition as recommended by the committee on the handicapped and included in the individualized education program (IEP).

(bb) Preschool program means a special education program for pupils with handicapping conditions who are not eligible to attend public schools pursuant to Education Law, section 3202.

(cc) Physical therapy means a related service provided in accordance with section 6731 (a) of Education Law.

(dd) Pupil with a handicapping condition means a person who has not attained the age of 21 prior to September 1 and who is entitled to attend public schools pursuant to section 3202 of the Education Law and who, because of mental, physical or emotional reasons has been identified as having a handicapping condition and can receive appropriate educational opportunities from special services and programs approved by the department. This term includes the following classifications:

(1) Autistic - A pupil who manifests a behaviorally defined syndrome which occurs in children of all levels of intelligence. The essential features are typically manifested prior to 30 months of age and include severe disturbances of developmental rates and/or sequences of responses to sensory stimuli, of speech, of language, of cognitive capacities, and of the ability to relate to people, events, and objects.

(2) Emotionally disturbed - A pupil who exhibits one or more of the following characteristics over a long period of time and to a marked degree, which adversely affects educational performance:

(i) An inability to learn which cannot be explained by intellectual, sensory, or health factors.

(ii) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.

(iii) Inappropriate types of behavior or feelings under normal circumstances.

(iv) A generally pervasive mood of unhappiness or depression.

(v) A tendency to develop physical symptoms or fears associated with personal or school problems.

The term does not include socially maladjusted pupils unless it is determined that they are emotionally disturbed.

(3) Learning disabled - A pupil with a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which manifests itself in an imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations. The term includes such conditions as perceptual handicaps, brain injury, neurological impairment, minimal brain dysfunction, dyslexia, and developmental aphasia. The term does not include children who have learning problems which are primarily the result of visual, hearing, or motor handicaps, of mental retardation, of emotional disturbance, or of environmental, cultural or economic disadvantage. A child who exhibits a severe discrepancy between expected achievement and actual achievement determined on an individual basis shall be deemed to have a learning disability. (Note: This definition of Learning Disabled has been changed from that found in paragraph (4) of subdivision 200.1(d) of the regulations of the commissioner that were in effect on July 30, 1980. The change is a result of the decision in the case of Riley vs. Ambach (U.S. D.C. E.D. N.Y. June 30, 1980) which is currently under appeal.)

(4) Mentally retarded - A pupil who, concurrent with deficits in adaptive behavior, consistently demonstrates general intellectual functioning that is determined to be 1.5 standard deviations or more below the mean of the general population on the basis of a comprehensive evaluation which includes an individual psychological evaluation.

(5) Deaf - A pupil with a hearing impairment which is so severe that the pupil is impaired in processing linguistic information through hearing, with or without amplification, which adversely affects educational performance.

(6) Hard of hearing - A pupil with a hearing impairment, whether permanent or fluctuating, which adversely affects the child's educational performance but which is not included under the definition of "deaf" in this section.

(7) Speech impaired - A pupil with a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, which adversely affects a child's educational performance.

(8) Visually impaired - A pupil with a visual handicap which even with correction adversely affects a child's educational performance. The term includes both partially seeing and blind children.

(9) Orthopedically impaired - A pupil who is physically handicapped and who has a severe orthopedic impairment which adversely affects a child's educational performance. The term includes impairments caused by congenital anomaly (e.g., clubfoot, absence of some member, etc.), impairments caused by disease (e.g. poliomyelitis, bone tuberculosis, etc.), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns which cause contractures.)

(10) Other health impaired - A pupil who is physically handicapped and who has limited strength, vitality or alertness due to chronic or acute health problems including, but not limited to, a heart condition, tuberculosis, rheumatic fever, nephritis, asthma, sickle cell anemia, hemophilia, epilepsy, lead poisoning, leukemia, diabetes, or tourette syndrome which adversely affects the pupil's educational performance.

(11) Multiply handicapped - A pupil with two or more handicapping conditions that result in multisensory or motor deficiencies and developmental lags in the cognitive, affective, or psychomotor areas, the combination of which cause educational problems that cannot be accommodated in a special education program solely for one of the impairments.

(ee) Related services pursuant to section 4401 of Education Law mean speech pathology, audiology, psychological services, physical therapy, occupational therapy, counseling services, other appropriate support services, and medical services as defined in this section.

(ff) Resource room program means a special education program for a handicapped pupil registered in either a special class or regular class who is in need of specialized supplementary instruction in an individual or small group setting for a portion of the school day.

(gg) Sixty percent of the school day means a minimum of three hours each school day of each school week at the elementary level, or a minimum of three and one half hours each school day of each school week at the secondary level.

(hh) Social history means a report of information gathered and prepared by qualified school district personnel pertaining to the interpersonal, familial, and environmental variables which influence a pupil's general adaptation to school, including but not limited to data on family composition, family history, developmental history of the pupil, health of the pupil, family interaction and school adjustment of the pupil.

(ii) Special class means a class consisting of pupils with the same handicapping conditions or with differing handicapping conditions who have been grouped together because of similar educational needs for the purpose of being provided a special education program.

(jj) Special education means specially designed instruction or special services or programs as defined in subdivision 2 of section 4401 of the Education Law provided at no cost to the parent, to meet the unique needs of a pupil with a handicapping condition.

(kk) Special education teacher means a person, including an itinerant teacher, certified or licensed to teach pupils with handicapping conditions.

(ll) Summer session means an instructional program of no fewer than 30 days provided during July and August.

(mm) Surrogate parent means a person appointed to act in place of parents or guardians when a child's parents or guardians are not known, are unavailable, or the child is a ward of the State.

(nn) Transitional support services mean those temporary services specified in a pupil's individualized educational program (IEP), provided to a regular or special education teacher to aid in the provision of appropriate services to a pupil with a handicapping condition transferring to a regular program or to a program or service in a less restrictive environment.

(oo) Twenty percent of the week means not less than five hours each week at the elementary level and not less than five and one half hours each week at the secondary level.

Section 200.2 Board of education responsibilities.

(a) Census of pupils with handicapping conditions.

(1) The board of education or trustees of each school district shall locate and identify all children with handicapping conditions who reside in the district and who are entitled to attend public school during the next school year. A register of such children shall be maintained and revised annually by the district committee on the handicapped. Procedures shall be implemented to assure the availability of statistical data to readily determine the status of each pupil with a handicapping condition in the identification, location, evaluation, placement and program review process. Data shall be reported by September 15 to the committee on the handicapped.

(2) Data requirements.

(i) Procedures shall be designed to record data on each pupil and shall include at least the following types of data:

(a) Pupil's name, address and birthdate.

(b) Pupil's parents' names, address(es), and the dominant language of the pupil's home.

(c) Pupil's suspected handicapping condition.

(d) Dates of referral, evaluations, recommendations of the committee on the handicapped, actual placement, and annual program reviews.

(e) Site where the pupil is currently receiving an educational program.

(f) If the pupil is not receiving an appropriate public education, the reason shall be described.

(ii) The data shall be organized so that it can readily be determined whether each pupil is receiving an appropriate public education, a partial education or no education at all.

(3) Data collection. All persons involved in the collection of data shall have received prior training and written information regarding the procedures to be followed in collecting the data.

(4) Data reporting. The reporting of data shall be conducted in accordance with the following policies and procedures:

(i) School districts shall prepare, and keep on file, summary reports of pupil data, including numbers of pupils who are:

(a) Unserved and the reasons they are unserved.

(b) Served.

(ii) A summary report of the pupils served shall be submitted by local school districts to the State Education Department on prescribed forms.

(5) The board of education or trustees of each school district, with the exception of cities with 125,000 or more inhabitants, shall report the number of pupils with handicapping conditions to the district superintendent of the supervisory district in which the district is located, by the first of October of each year.

(6) Paragraphs (1) through (5) of this subdivision shall not apply to schools and pupils subject to the provisions of articles 81, 85, 87, and 88 of the Education Law and chapter 1060 of the Laws of 1974. Schools subject to the provisions of such articles and chapter shall keep their own census of pupils, and shall submit such census directly to the commissioner on forms prescribed by the commissioner.

(b) Written policy. Each board of education shall adopt written policy that:

(1) Establishes administrative practices and procedures to ensure that pupils with handicapping conditions residing in the district have the opportunity to participate in school district programs, including extracurricular programs and activities, which are available to all other pupils enrolled in the public schools of the district.

(2) Establishes administrative practices and procedures for appointing and training appropriately qualified personnel, including the members and chairperson of the committee on the handicapped, to carry out the functions identified in these regulations.

(c) District plans. Each board of education which receives an apportionment for eligible pupils with handicapping conditions pursuant to subdivision 19 of section 3602 of the Education Law shall use such apportionments for special education programs and services which are in accordance with the provisions of this Part. Each board of education which receives such apportionment shall prepare satisfactory plans by November 15, 1982 and by November 1 every third year thereafter. Each such plan shall include, but need not be limited to the following:

(1) A description of the nature and scope of special education programs and services available to pupils residing in the district, including, but not limited to, descriptions of resource room and special class programs to be provided by the district in terms of group size and composition.

(2) Identification of the number and age span of pupils to be served by type of handicapping condition, and recommended setting.

(3) The method to be used to evaluate the extent to which the objectives of the program have been achieved.

(4) The estimated budget to support such plan.

(5) The date on which such plan was adopted by the board of education.

(d) Approval of services. The board of education or board of trustees of each school district shall, upon completion of the IEP, determine the appropriate special education programs and services to be provided to a pupil with a handicapping condition after consideration of the recommendations of the committee on the handicapped. The board shall notify the parent of its action in accordance with section 4402 (2) (b) (2) of the Education Law.

(e) Maintenance of lists. The board of education or trustees of each school district shall establish a list of:

(1) persons from whom the district shall choose an impartial hearing officer.

(2) persons from whom the district shall choose a surrogate parent.

Section 200.3 Committee on the handicapped. (a) Each board of education or board of trustees and each child care institution as defined in Education Law section 4001 which maintains a school shall appoint a committee on the handicapped in accordance with the provisions of Education Law section 4402.

(b) Except in cities having a population in excess of 125,000 inhabitants, the board of education of any city school district, or any school district having in excess of 200 pupils with handicapping conditions may appoint subcommittees to assist the committee on the handicapped of such districts in accordance with the provisions of this subdivision.
   (1) The board of education shall determine the number of subcommittees to be appointed, upon the recommendation of the committee on the handicapped.
   (2) The membership of each subcommittee shall be similar in composition to that of the committee on the handicapped.
   (3) Except as provided in paragraphs (4) and (5) of this subdivision, each subcommittee may perform the functions for which the committee on the handicapped is responsible pursuant to the provisions of Education Law section 4402.
   (4) In the event that the recommendation of a subcommittee concerning a modification or change in the identification, evaluation, educational placement or provision of a free appropriate public education to a pupil is not acceptable to the parent or legal guardian of such pupil, the subcommittee shall refer the matter to the committee on the handicapped.
   (5) Each subcommittee shall report annually the status of each pupil with a handicapping condition within its jurisdiction to the committee on the handicapped.

(c) The board of education of any city school district having a population in excess of 125,000 inhabitants may appoint subcommittees to assist the committee on the handicapped of such districts in accordance with the provisions of this subdivision.
   (1) The board of education shall determine the number of subcommittees to be appointed, upon the recommendation of the committee on the handicapped.
   (2) The membership of each subcommittee shall be similar in composition to that of the committee on the handicapped.
   (3) Except as provided in paragraph (4) of this subdivision, each subcommittee may perform the functions for which the committee on the handicapped is responsible pursuant to the provisions of Education Law section 4402.
   (4) Each subcommittee shall report annually the status of each pupil with a handicapping condition within its jurisdiction to the committee on the handicapped.

Section 200.4 Procedures for referral, evaluation, individualized education program (IEP) development, placement and review. (a) Referral. A pupil suspected of having a handicapping condition shall be referred in writing to the chairperson of the district's committee on the handicapped or to the building administrator of the school which the pupil attends or is eligible to attend.

(1) A referral, which shall state the basis for the belief that the pupil may have a handicapping condition, may be made by:
  (i) A pupil's parent or person in parental relationship.
  (ii) A professional staff member of the school district in which the pupil resides or the public or private school the pupil legally attends.
  (iii) A licensed physician.
  (iv) A judicial officer.
  (v) The commissioner or designee of a public agency with responsibility for welfare, health or education of children.
  (vi) For purposes of referring one's self, a pupil who is 18 years of age or older, or an emancipated minor, who is eligible to attend the public schools of the district.

(2) The date of receipt of a referral means the date on which either the committee chairperson or the building administrator receives the referral, whichever is earlier.

(3) If a referral is received by the building administrator, it shall be forwarded to the committee chairperson within five days of its receipt by the administrator.

(4) If a referral is received by the committee chairperson, a copy shall be forwarded to the building administrator within five days of its receipt by the committee chairperson.

(5) A committee chairperson who receives a referral shall notify the parent pursuant to section 200.5(a) of this Part within five days of the date he or she receives the referral.

(b) Evaluation.

(1) An individual evaluation of the referred pupil shall be initiated by a committee on the handicapped and shall include, at no cost to the parent, at least a physical examination in accordance with the provisions of section 904 of the Education Law, an individual psychological examination, a social history and other suitable examinations and evaluations as may be necessary to ascertain the physical, mental and emotional factors which contribute to the suspected handicapping conditions.

(2) School districts shall ensure that:
  (i) Tests and other assessment procedures:
    (a) Are provided and administered in the child's dominant language or other mode of communication, unless it is clearly not feasible to do so.
    (b) Have been validated for the specific purpose for which they are used.

(c) Are administered by trained personnel in accordance with the instructions provided by those who developed such tests or procedures.

(ii) Tests and other assessment procedures include those tailored to assess specific areas of educational need and not merely those which are designed to provide a general intelligence quotient.

(iii) Tests are selected and administered to ensure that when a test is administered to a child with impaired sensory, manual, or speaking skills, the test results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills, except where those skills are factors which the test purports to measure.

(iv) No single procedure is used as the sole criterion for determining an appropriate educational program for a child.

(v) The evaluation is made by a multidisciplinary team or group of persons, including at least one teacher or other specialist with knowledge in the area of the suspected disability.

(vi) The child is assessed in all areas related to the suspected disability, including, where appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.

(vii) The evaluation includes observation of the pupil in the current educational setting.

(c) Recommendation. Individualized education program (IEP) Phase I. Within 30 days of the date of receipt of referral, the committee on the handicapped shall provide a recommendation to the board of education.

(1) If the pupil has been determined to be ineligible for special education, the recommendation shall indicate the reasons the pupil was found ineligible.

(i) A copy of appropriate evaluation information shall be provided to the building administrator.

(ii) A copy of the recommendation shall be provided to the parent pursuant to section 200.5 (b) of this Part.

(2) If the pupil has been determined to be eligible for special education services, the recommendation shall:

(i) Indicate the classification of the handicapping condition and recommended program and placement including the extent to which the pupil will participate in regular education programs, including occupational education when appropriate.

(ii) Report the present levels of educational performance.

(iii) Indicate the individual needs of the pupil according to each of the four criteria listed in 200.6 (f) (2).

(iv) Indicate the class size in which the pupil should be placed pursuant to subdivisions (e) (5) and (f) (4) of section 200.6 of this Part.

(v) Indicate the projected date for initiation of special education and related services, the amount of time per day the pupil will receive such services, and the projected date of the review of the pupil's need for such services.

(vi) Describe any specialized equipment and adaptive devices needed for the pupil to benefit from education.

(vii) List annual goals that are consistent with the pupil's needs and abilities.

(viii) List those testing modifications to be used consistently by the pupil in the recommended educational program.

(3) A report of the evaluation upon which the recommendation is based shall be forwarded to the board of education along with the recommendation.

(d) Within 30 days of the receipt of the recommendations of the committee on the handicapped, the board of education shall provide appropriate special programs and services, which shall include provisions for the pupil to participate in physical education and/or adaptive physical education. For a pupil initially entering special education the provision of a special education program shall be for continuing evaluation and completion of the individualized education program (IEP) in the recommended setting and shall be with the consent of the parent pursuant to section 200.5(b) (2) (ix) of this Part.

(e) Planning conference. Individualized education program (IEP) Phase II. Planning conferences to develop the individualized education program (IEP) shall be conducted at least annually in accordance with the following provisions:

(1) The conference for each pupil newly identified as having a handicapping condition shall be conducted as soon as possible, but no later than 30 days after the pupil enters the recommended special education program.

(2) Participants at the planning conference shall include the pupil's teacher, the pupil whenever appropriate, the parent or legal guardian, a representative of the school district who is qualified to provide or supervise the provision of special education, and other individuals at the discretion of the parent or agency. An interpreter may accompany the parent or legal guardian to allow communication in the parent's dominant language. If the child is not in a district operated program, a representative of the school district who is qualified to provide or supervise the provision of special education shall be given the opportunity to attend. A member of the evaluation team, or a person who is knowledgeable about the evaluation procedures used with the pupil, shall also participate in the planning conference for a pupil who is being placed for the first time.

(3) A notice of the planning conference shall be given to the parent or legal guardian of the pupil at least five days prior to the proposed date of the conference which shall state the time, location and date that the conference will be conducted.

(4) If it is not possible or practicable to establish a mutually agreeable time for the parent or legal guardian to attend the conference, other alternatives, including, but not limited to, individual or conference telephone discussions, shall be attempted.

(5) The planning conference shall result in the following additions to the individualized education program (IEP) developed during Phase I:
   (i) A statement of short-term objectives consistent with the annual goals for the pupil.
   (ii) Appropriate objective criteria and evaluation procedures and schedules for determining, on at least an annual basis, whether the instructional objectives are being achieved.

(6) If a school, agency, or parent believes that the program or placement recommended in the individualized education program (IEP) is no longer appropriate, such party may refer the pupil to the committee on the handicapped for review provided that the pupil shall remain in the current placement pending a new recommendation of the committee on the handicapped unless the board and parent otherwise agree.

(f) Annual review. Each handicapped pupil's individualized education program (IEP) shall be reviewed and, if appropriate, revised periodically, but not less than annually:

(1) The annual review of each handicapped pupil to be conducted by the committee on the handicapped or subcommittee thereof pursuant to section 4402 (1) (b) (2) of the Education Law shall be based upon a review of the pupil's individualized education program (IEP) and other current information pertaining to the pupil's performance.

(2) Upon completion of the annual review, the committee on the handicapped shall notify the parents of their right to address the committee, either in person or in writing, on the propriety of the committee's recommendation in accordance with subdivision 200.5(a) of this Part. However, consent to implement such recommendations shall not be required.

(3) A committee on the handicapped shall arrange for a comprehensive re-evaluation by qualified appropriate professionals of each pupil with a handicapping condition at least every three years.

Section 200.5 Procedural due process. (a) Notice of referral, re-evaluation, or annual review.

(1) A chairperson of a committee on the handicapped who receives a referral of a pupil who has not been previously identified as having a handicapping condition shall notify the parent in writing within five days after receipt of such referral that evaluative information is being sought regarding the pupil.

(i) The notice shall include a description of the proposed evaluation and the uses to be made of the information, and shall request parental consent for such evaluation. The notice shall inform the parent of his right to request the presence of the school physician member of the committee on the handicapped at any meeting of such committee pursuant to section 4402(1)(b)(1) of the Education Law. The notice shall also inform the parent of the date, time, and location of the meeting at which the parent shall have the opportunity to participate in the development of phase I of the individualized education program (IEP) and to address the committee, either in person or in writing, on the propriety of any recommendation by the committee as to the classification, program or placement of the pupil to be made to the board of education or trustees. The notice shall state that the parent has the right to be accompanied by such individuals as the parent desires at the meeting with the committee.

(ii) In the event the parent does not grant consent for an individual preplacement evaluation, the parent of the pupil to be evaluated shall be informed by the committee chairperson that, upon request, he/she will be given an opportunity for an informal conference with the committee or designated professionals most familiar with the proposed evaluation, and counsel or an advisor of the parent's choice, at which time the parent shall be afforded an opportunity to ask questions regarding the proposed evaluation. If the parent does not request or attend such a conference or continues to withhold consent for evaluation for a period of 30 days after the date of notification, the board of education shall initiate a formal impartial hearing to be conducted in accordance with subdivision (c) of this section for the purpose of determining whether such an evaluation is warranted.

(2) A committee on the handicapped which conducts a re-evaluation or annual review of the status of a pupil previously identified as having a handicapping condition shall give prior written notice to the parent of the pupil pursuant to subparagraph (i) of paragraph (1) of this subdivision. However, parental consent shall not be required prior to such re-evaluation or review.

(3) In the event that the parent does not choose to address the committee on the propriety of any subsequent recommendations, the committee shall forward its recommendation to the board of education in accordance with subdivision (b) of this section.

(b) Upon completion of an evaluation of a pupil as the result of a referral, re-evaluation, or an annual review, a committee on the handicapped shall report its findings for each pupil to the board of education or trustees in the form of a recommendation regarding the pupil's eligibility and need for special education.

(1) A committee on the handicapped which:

(i) Concludes that a child does or does not possess a handicapping condition to a degree sufficient to warrant provision of special education; or

(ii) Recommends a change in or continuation of the classification, educational placement or educational program of a pupil; or

(iii) Recommends a change in the provision of a free appropriate public education to a pupil,

shall give written notice to the parent of its recommendation to the board of education or trustees.

(2) Such notice shall:

(i) Describe in detail the recommendation to the board of education or trustees.

(ii) Specify the test or reports upon which the recommendation is based.

(iii) State that the school files, records and reports pertaining to the pupil will be available to the parent for inspection and interpretation. Such records shall be available for duplication at reasonable cost.

(iv) Describe in detail the right to obtain a hearing in accordance with the provisions of subdivision (c) of this section, if there are objections to the recommendation.

(v) Include a statement of procedures for appealing the decision resulting from the formal hearing.

(vi) Indicate that the parent or legal guardian shall be afforded an opportunity to obtain an independent educational evaluation of the child and include names, addresses and telephone numbers of appropriate public and private agencies and other professional resources where such services may be obtained. The parent has a right to such independent evaluation at public expense if the parent disagrees with the evaluation obtained by the school district. However, the school district may initiate a hearing to show that its evaluation is appropriate. If the impartial hearing officer's recommendation is that the evaluation is appropriate, the parent has a right to an independent educational evaluation but not at public expense.

(vii) Indicate that the parent or legal guardian may be able to obtain free or low-cost legal and other relevant services at no expense to the school district and include the names, addresses and telephone numbers of appropriate agencies and other professional resources where such services may be obtained.

(viii) Indicate that during the pendency of any proceedings conducted pursuant to this section, unless the commissioner or local board of education and the parents or legal guardian otherwise ageee, the pupil shall remain in the then current educational placement of such child, or, if applying for initial admission to a public school, shall be placed in the public school program until all such proceedings have been completed.

(ix) Request parental consent to the provision of special programs and services for pupils entering special education for the first time.

(c) Within 10 days after the receipt of a notice of recommendation in accordance with the provisions of subdivision (b) of this section or within 10 days after the receipt of a notice from the board of education or trustees that the recommendation of the committee on the handicapped has been rejected or modified by the board of education or trustees, or in the event that the committee on the handicapped fails to make a recommendation within 30 days from the date that a child has been referred to such committee for evaluation and recommendation, or that the board of education or trustees shall fail to effectuate the recommendation of such committee within 30 days after the receipt of such recommendation, a parent or legal guardian may request, in writing, an impartial formal hearing. If within 30 days following the date of notification the parent does not consent to the initial provision of special programs and services, the board of education shall initiate such a hearing. When a hearing is requested by either party, the board of education shall arrange for such a hearing to be conducted in accordance with the following rules:

(1) The board of education or trustees shall appoint an impartial hearing officer to conduct the hearing. The hearing officer shall be authorized to administer oaths and to issue subpoenas in connection with the administrative proceedings before him.

(2) A written or electronic verbatim record of the proceedings before the hearing officer shall be maintained and made available to the parties.

(3) At all stages of the proceeding, where required, interpreters of the deaf or interpreters fluent in the dominant language of the pupil's home shall be provided at district expense.

(4) The impartial hearing officer shall preside at the hearing and shall provide all parties an opportunity to present evidence and testimony.

(5) The parties to the proceedings may be represented by legal counsel or individuals with special knowledge or training with respect to the problems of handicapped children, and may be accompanied by other persons of their choice.

(6) The hearing shall be closed to the public unless the parent requests an open hearing.

(7) The parents, school authorities and their respective counsel or representative shall have an opportunity to present evidence and to confront and question all witnesses at the hearing. Each party shall have the right to prohibit the introduction of any evidence the substance of which has not been disclosed to such party at least five days before the hearing.

(8) The parents shall have the right to determine whether the child shall attend the hearing.

(9) The impartial hearing officer shall render a decision and mail a copy of the decision to the parents and to the board of education not later than 45 calendar days after the receipt by the board of education of a request for a hearing or after the initiation of such a hearing by the board. The decision of the impartial hearing officer shall be based solely upon the record of the proceeding before the impartial hearing officer, and shall set forth the reasons and the factual basis for the determination. The decision shall also include a statement advising the parents and the board of education of the right to obtain a review of such decision by the commissioner pursuant to the provisions of Education Law, section 4404 and Public Law 94-142. Within five days from the receipt of a copy of the decision of the hearing officer, the board of education shall mail a copy of such decision, after deleting any personally identifiable information, to the Office for Education of Children with Handicapping Conditions, State Education Department, for the use of the State advisory panel.

(d) Surrogate parents

(1) Qualifications. Persons selected as surrogate parents shall not be officers, employees, or agents of the local school district or State Education Department or other agency involved in the education or care of the child, and shall to the extent possible:

(i) Have no other interest which could conflict with their primary allegiance to the pupil they would represent.

(ii) Be committed to acquaint themselves personally and thoroughly with the pupil and the pupil's educational needs.

(iii) Be of the same racial, cultural and linguistic background as the pupil they seek to represent.

(iv) Be generally familiar with the educational options available to handicapped children.

(2) Procedures for assigning surrogates. Assignment of a surrogate parent to a particular pupil shall be made in accordance with the following procedures:

(i) Any person whose work involves education or treatment of children who knows of a pupil who may need special education services, and who knows that the parents or guardians are not known or are unavailable, or that the pupil is a ward of the State, may file a request for assignment of a surrogate parent to the pupil with the board of education.

(ii) The committee on the handicapped shall send notice of the possible need for a surrogate parent to the adult in charge of the pupil's place of residence and to the parents or guardians at their last known address.

(iii) The committee on the handicapped shall determine whether the parents or guardians are unknown or unavailable, or whether the pupil is a ward of the State. This determination shall be completed within a reasonable time following the receipt of the original request for a surrogate parent. If the committee on the handicapped finds that there is a need for a surrogate parent, such assignment shall be made by the board of education or trustees within ten days of the date of the determination by the committee.

(iv) Once assigned, the surrogate parent shall represent the pupil at least through the time of the first periodic review of the pupil's educational placement.

(3) Selection. Where the pupil's parents or guardians are unknown or unavailable or where the pupil is a ward of the State, the board of education or trustees shall select a surrogate parent from a list of individuals who are eligible and willing to serve as surrogate parents.

(e) Confidentiality of personally identifiable data.

(1) Personally identifiable data, information or records pertaining to a pupil with a handicapping condition shall not be disclosed by any officer or employee of the State Education Department or any school district, or member of a committee on the handicapped, to any person other than the parent of such pupil, except in accordance with the provisions of part 99 of title 34 of the Code of Federal Regulations.

(2) Each private school subject to the provisions of section 200.7 of this Part shall adopt procedures comparable to those set forth in part 99 of title 34 of the Code of Federal Regulations to preserve the confidentiality of records pertaining to pupils attending such schools pursuant to State appointment or contract between the department or a school district and the private school.

Section 200.6 Continuum of services. (a) A pupil with a handicapping condition shall be provided with appropriate special education.

(1) To the maximum extent appropriate, pupils with handicapping conditions shall be provided special education in the least restrictive environment as defined in section 200.1 (t) of this Part.

(2) A pupil with a handicapping condition shall be provided the special education determined by the board of education to be necessary to meet the pupil's special educational needs.

(b) Requirements for special education staff.

(1) Special education instruction shall be provided by individuals certified or licensed pursuant to section 80.6 and 80.2 (j) of these regulations.

(2) Related services shall be provided by individuals with appropriate certification or license in each area of related service.

(3) When a remedial service is included in the individualized education program (IEP) as an other support service, such service is to be provided by appropriately certified individuals.

(4) An administrator or supervisor of special education programs serving more than 25% of his assignment in such capacity shall hold a certificate valid for administrative and supervisory service pursuant to section 80.4 of these regulations.

(c) Transitional support services prescribed in the individualized education program (IEP) shall be provided for a teacher upon the recommendation of the committee on the handicapped, and shall be specified in the pupil's individualized education program (IEP).

(1) When the provision of transitional support service is under consideration by a committee on the handicapped, the teacher of the pupil for whom the service is being considered shall participate in the meeting of the committee.

(2) Transitional support services may be provided for no more than 60 days, except that when the duration recommended by the committee on the handicapped for transitional support services is completed, the committee, upon review of the need for continuation, may renew the service for another period not to exceed 60 days.

(d) Related services and other support services shall be recommended by the committee on the handicapped to meet specific needs of a pupil with a handicapping condition as set forth in the individualized education program (IEP).

(1) The frequency and duration of each such service shall be in the individualized education program (IEP) based on the individual pupil's need for the service.

(2) For pupils with handicapping condition determined to need speech and language services, such services shall be provided a minimum of two periods each week, and the total caseload of such pupils for teachers providing such services shall not exceed 65.

(3) A pupil with a handicapping condition may be provided with more than one such service in accordance with the need of the pupil.

(4) Related and other support services may be provided with a regular education program or in conjunction with other special education programs and services.

(e) Resource room programs. The following standards shall be used in the provision of resource room programs for pupils with handicapping conditions.

(1) Each pupil with a handicapping condition in a resource room program shall receive not less than five hours of instruction per week in such program.

(2) Pupils shall not spend more than 50% of their time during the day in the resource room program.

(3) An instructional group which includes pupils with handicapping conditions in a resource room program shall not exceed five pupils per teacher.

(4) The composition of instructional groups in a resource room program shall be based on the similarity of the individual needs of the pupils according to:

(i) Levels of academic or educational achievement and learning rates,

(ii) Levels of social development,

(iii) Levels of physical development, and

(iv) The management needs of the pupils in the classroom.

(5) The total number of pupils with a handicapping condition assigned to a resource room teacher shall not exceed 20.

(f) Special classes. The following standards shall be used in the provision of special classes for pupils with handicapping conditions.

(1) A pupil with a handicapping condition shall be placed in a special class for not less than 50% of his/her time during the school day.

(2) In all cases the size and composition of a class shall be based on the similarity of the individual needs of the pupils according to:

(i) Levels of academic or educational achievement and learning rates,

(ii) Levels of social development,

(iii) Levels of physical development and,

(iv) The management needs of the pupils in the classroom.

(3) A special class shall be composed of pupils with the same handicapping conditions, or of pupils with differing handicapping conditions but with similar individual needs.

(4) Special class size for pupils with handicapping conditions. The maximum class size for those pupils whose special education needs consist primarily of the need for specialized instruction which can best be accomplished in a self-contained setting shall not exceed twelve pupils, except that:

(i) The maximum class size for those pupils in self-contained special education classes whose behavioral problems interfere with the instructional process to the extent that an additional adult is needed within the classroom to assist with the management needs of such pupils shall not exceed twelve pupils, with at least one paraprofessional assigned to each class.

(ii) The maximum class size for those pupils whose management needs are determined to be highly intensive, frequently resulting from aggressive or self-abusive behavior or from extremely withdrawn behavior that requires very individualized interaction shall not exceed six pupils, with at least one paraprofessional assigned to each class.

(iii) The maximum class size for those pupils with severe multiple handicaps whose programs consist primarily of habilitation and treatment shall not exceed twelve pupils. In addition to the teacher, the staff/pupil ratio shall be one staff person to three pupils. The additional staff may be teachers, paraprofessionals and/or related service providers.

(5) The chronological age range within special classes of pupils with handicapping conditions who are less than sixteen years of age shall not exceed 36 months. The chronological age range within special classes of pupils with handicapping conditions who are sixteen years of age and older is not limited. However, there shall be no chronological age range limitations for groups of pupils placed in special classes as described in paragraph (4) (iii) of this subdivision.

(6) Upon application and justification to the commissioner, approval may be granted for variance from the special class sizes and chronological age ranges specified in paragraphs (4) and (5) respectively

(7) For parents of pupils placed in special classes described in paragraph (4) (ii) and (iii) of this subdivision, provision shall be made for parent counseling and education for the purpose of enabling parents to perform appropriate follow-up intervention activities at home.

(g) Home and hospital instruction. Pupils with handicapping conditions who are recommended for home and/or hospital instruction by the committee on the handicapped shall receive individualized instruction as follows:

(1) A minimum of five hours per week at the elementary level, preferably one hour daily.

(2) A minimum of ten hours per week at the secondary level, preferably two hours daily.

(h) In-state or out-of-state private schools

(1) Eligibility of pupils. For placement in a private school, satisfactory evidence shall be provided that:

(i) The pupil for whom assistance is requested is of school age.

(ii) There is present a handicapping condition or combination of handicapping conditions.

(iii) An application to the commissioner has been made by the board of education of the school district in which such pupil resides, which shall include adequate medical and/or psychological examinations, establishing the fact that the pupil is handicapped to the extent that appropriate public facilities for instruction are not available.

(2) Application. An application shall be made to the commissioner by the board of education for approval of the placement of a pupil with a handicapping condition in a private educational facility. No placement shall be effected until approval has been received. An annual application for the continuation of an approved placement of a pupil with a handicapping condition in a facility shall be submitted by the board of education to the commissioner prior to June 1 preceding the school year for which such continued placement is sought.

(3) Criteria for approval. No pupil with a handicapping condition shall be placed in a private school unless:

(i) Such placement is determined to be the least restrictive environment appropriate to the pupil's educational needs;

(ii) Such placement is in a private school approved by the commissioner for the education of pupils with handicapping conditions;

(iii) Such placement has been approved by the commissioner;

(iv) The placement shall be for the entire school year or the balance thereof.

Section 200.7 Program standards for education programs for pupils with handicapping conditions being educated in private schools and state-operated or state-supported schools. (a) Approval of private schools for pupils with handicapping conditions funded pursuant to Article 89 of the Education Law.

(1) General

(i) Private schools and special act school districts for handicapped pupils, including summer schools, shall be eligible for approval by the commissioner for the purpose of contracting for the education of pupils with handicapping conditions provided such schools meet the criteria in this Part.

(ii) Facilities of educational programs located outside the continental United States shall not be eligible for approval.

(iii) Reimbursement rates shall be calculated according to New York State statutes and applicable regulations for all approved private schools, including out-of-state schools and for special act school districts.

(iv) Private schools seeking initial approval to be reimbursed with public funds shall have access to sufficient capital or other financial resources other than revenues expected from New York State or local school districts to cover all operating, property maintenance, leasing or purchase costs during the year of conditional approval.

(2) Approval of private schools for reimbursement with public funds.

(i) Conditional approval for private schools shall be limited to a period of one school year or the period of time required to complete approval, and will be based on:

(a) Submission of program information forms.

(b) Submission of budget or financial statement information including evidence that the school has enough capital or other financial resources, other than state or local sources of revenue, to be able to operate for at least one year.

(c) A fire safety check by the New York State Division of Fire Prevention and Control for in-state private schools, and a state or local fire safety agency check for out-of-state schools.

(d) For in-state schools, application for a charter from the Board of Regents by the school seeking approval , and for out-of-state schools, a license or charter from the state education agency of the state in which the school is located.

(e) At least one on-site program review visit by program or fiscal staff of the Office for Education of Children with Handicapping Conditions.

(ii) Final approval of schools which have had conditional approval:

(a) Will be based on at least two site visits by program or fiscal staff of the Office for Education of Children with Handicapping Conditions during the year of conditional approval.

(b) Will take effect as of the date a final approval letter is issued by the commissioner, or his designee.

(3) Denial or termination of private school approval.

(i) Private schools may be denied approval or removed from New York's list of private schools approved for reimbursement with public funds or such approval may be terminated according to the following procedure:

(a) The commissioner or his designee will notify the school in writing of the reasons why denial or termination of approval is necessary, including a list of program or financial deficiencies and violations of State and Federal law or regulations which the commissioner believes to exist at the schools.

(b) Schools may reply to the commissioner's notification within 30 days addressing the commissioner's statement of reasons, indicating whether deficiencies or violations exist, what steps may be taken to correct conceded deficiencies or violations, and the time period in which deficiencies or violations will be corrected. If no reply is received, termination will be effective 30 days from the date of receipt of the commissioner's notification.

(c) Requests for a hearing to review a proposed decision to deny or terminate approval may be made to the commissioner's designee. The request shall be made in writing to the commissioner's designee within ten days of receipt of a notice of removal from the list.

(d) Schools may be removed from the approved list five days after written notice by the commissioner indicating that there is a clear and present danger to the health or safety of children attending the school, and listing the dangerous conditions at the school.

(b) School operation and administration.

(1) Application. An application shall be made to the commissioner by the board of education for approval of the placement of a handicapped pupil in an approved private educational facility which has been determined to be the least restrictive environment for the pupil. An annual application for the continued placement of a handicapped pupil in such approved facility shall be submitted by the board of education to the department prior to June 1 preceding the school year for which such continued placement is sought.

(2) Parents of children attending schools governed by this section shall not be asked to make any payments in lieu of, in advance of, or in addition to state, school district or county payments for allowable costs for children placed according to New York State procedures.

(3) The confidentiality of pupil records at schools governed by this Part shall be maintained, and parental access to such records shall be permitted, in a manner comparable to that required of school districts pursuant to the Family Educational Rights and Privacy Act of 1974 as amended.

(4) No pupil attending any school governed by this section may be suspended for a period of five days or less for disciplinary reasons unless the pupil and the person in a parental relation to the pupil are, on request, given an opportunity for an informal conference. During this conference, the person in parental relation shall be authorized to ask questions of complaining witnesses. If the suspension is for more than five days, such suspension shall constitute a change in the pupil's educational placement and the parents shall be entitled to notice and review procedures listed in section 200.5.

(5) The length of the school day shall be comparable to that required by section 175.5 of this chapter. The school day shall include instructional services and related services, as required, but shall not include transportation.

(6) Instruction for not less than 180 days each year shall be provided for each pupil. Approved private schools and state-operated and state-supported schools shall submit calendars of such days in session to the commissioner for approval by July 1 of the preceding school year. All approved private schools shall comply with the Education Law regarding attendance. Attendance registers shall be available for inspection by appropriate personnel of the contracting school district, the department, and the school district in which the school is located.

(7) Schools initially approved for reimbursement after September 1, 1981 shall provide instruction to a minimum of 13 children by September 1, 1982.

(8) Personnel qualifications. All professional instructional and supervisory personnel shall be appropriately certified in accordance with the provisions of Part 80 and section 200.6 of this Part.

(9) A Phase II individualized education program (IEP) and an educational progress report on each pupil shall be provided by the approved school to the committee on the handicapped of the referring district or the referring agency at least annually. Other required data and/or reports shall be made available by the private school to the referring district or agency on request.

(10) A report of the annual fire inspection for private schools located in New York State as required by section 807-a of the Education Law shall be on file in the school.

(c) Appointment of blind, deaf and severely physically handicapped pupils to certain state-operated and state-supported schools pursuant to article 85, 87, and 88 of the Education Law and chapter 1060 of the Laws of 1974.

(1) Application for State appointment of deaf, blind or severely physically handicapped pupils to state-operated or state-aided schools for the blind, deaf, or severely physically handicapped shall be initiated by parents through application to the commissioner, supported by adequate written evidence of the blind, deaf or severely handicapping condition. The commissioner will direct the parents to make arrangements at a designated state-operated or state-supported school for an evaluation. Such school will evaluate the child's eligibility for its program and notify the parents, and commissioner, of the results of such evaluation and recommend appointment, if appropriate. In the case of a child not recommended for appointment to a particular state-operated or state-supported school or in the event of a change in a recommendation concerning the classification, placement, or provision of a free appropriate public education to a pupil at a state-operated or state-supported school, the school shall notify the parent. Such notification shall be comparable to that required by section 200.5(b) of this Part, shall include all reasons for lack of acceptance of the child into the program or for the change in the recommendation, and shall include recommendations for a more appropriate placement or program. The parent may, within 10 days of receipt of such notification, file with the department a written request for a hearing before an impartial hearing officer who will be designated by the department. Such hearing officer shall not be an employee of the department. The procedures relating to the conduct of the hearing and review of the decision of the hearing officer shall be comparable to those set forth in subdivision (c) of section 200.5 of this Part. The approval of the commissioner in granting the State appointment, if appropriate, will be determined upon the following criteria:

(i) Only those profoundly deaf, i.e., with a loss in excess of 80 db ISO in the better ear, or deaf-blind, or severely physically handicapped students between the ages of 3 and 21, or legally blind students, at least kindergarten age or receiving a special instructional program at the preschool level, who are residents of New York State, may receive appointments to the state-operated or state-supported schools and be included for State support for their education.

(ii) Deaf or blind children will be appointed to the school for the deaf or blind nearest their place of residence on a day basis. Residential school-week appointments, if available, will be considered only when travel arrangements preclude attendance on a day basis. Exceptions due to student educational needs may be necessary, and will be considered when a child's parent presents adequate justification for such placement. Appointments for severely physically handicapped children to attend the Human Resources School shall be on a day basis only.

(2) If the commissioner declines to make a State appointment of a child who has been recommended for appointment by a state-operated or state-supported school, or if he seeks to change a child's classification or placement against the recommendation of the state-operated or state-supported school which such child attends, the parent may, within 10 days after notice of such determination, file with the department a written request for a hearing before an impartial hearing officer who will be designated by the department. Such a hearing officer shall not be an employee of the department. The procedures relating to notice and review of a refusal of State appointment or of a change of classification or placement by the commissioner shall be comparable to those set forth in subdivisions (b) and (c) of section 200.5 of this Part and shall be provided by the education department. Review of the determination of the hearing officer shall be available by means of a proceeding pursuant to article 78 of the Civil Practice Law and Rules, and may be instituted by any party to the hearing.

(3) State-appointed pupils shall be eligible for transfer between state-operated and/or state-supported schools upon appropriate evaluation and recommendation of the state-operated and/or state supported school which such pupils currently attend, with the approval of the commissioner. State-appointed pupils being considered for transfer shall remain in the school they currently attend until an alternate school placement is finalized. Such transfers shall be subject to the notice and review procedures set forth in paragraph (1) of this subdivision.

(4) State-operated or state-supported schools may apply to the commissioner for the termination of the appointment of a pupil. An application for this purpose shall set forth the basis for such action and shall be made only after compliance with the notice and review procedures set forth in paragraph (1) of this section. No appointment shall be terminated until the pupil can be transferred to a more appropriate program without interruption of the continuity of such pupil's education program.

(5) The eligibility of deaf infants to receive educational services pursuant to section 4204-a of the Education Law, and the approval of educational facilities to provide such services, shall be determined in accordance with the provisions of this paragraph.

(i) For the purposes of this paragraph:

(a) Deaf infant means a child of less than three years of age who has a severe hearing loss which precludes the learning of spoken language through the sense of hearing alone. Infants who are unable to respond to sounds presented at intensities of 90 decibels (db) sound pressure level (SPL) shall be eligible for special educational assistance in order to develop spoken language. Infants of less than two years of age who are unable to respond at 60 decibels (db) sound pressure level (SPL) may be eligible for such services, provided that they have been recommended by a diagnostic agency.

(b) Approved facilities means the schools for the deaf which are enumerated in section 4201 of the Education Law, and other public and private agencies which have been approved by the commissioner in accordance with the provisions of subparagraph (iii) of this paragraph.

(ii) Eligibility of infant. An annual application for services shall be filed by the parents or legal guardians of deaf infants on forms prescribed by the commissioner. The initial application for each infant shall be accompanied by audiological, otological, and other appropriate reports which will be used in determining eligibility for program assistance. If an infant is determined to be eligible, a referral will be made to an approved facility by the commissioner. Continuation in the program shall be dependent upon infant progress reports which shall be submitted quarterly by the facility which each infant attends. If a facility indicates that an infant cannot benefit from the educational program to which such infant has been admitted, the facility shall forward to the commissioner its recommendations for termination of the infant's participation in such program and for any appropriate educational services for such infant.

(iii) Eligibility of facilities. A facility shall be approved to provide educational services to such infants on an annual basis, following an inspection of such facility, provided that the plant, staff and program thereof meet the following standards:

(a) The facility shall provide an educational program for both infant and parent or legal guardian which shall include language development, auditory stimulation, speech and speech reading. Language development may include any system of oral or manual communication or combination of both. Such program shall also provide orientation to parents regarding the implications of deafness, developmental needs of deaf infants, and the psychosocial problems encountered by parents or legal guardians of deaf infants.

(b) An approved facility shall have a physical plant appropriately equipped to serve infants who are deaf, and shall be subject to a site visitation by the commissioner.

(c) An approved facility shall adhere to all fire and safety regulations of the fire district in which it is located.

(d) An approved facility shall employ New York State certified teachers of the deaf or speech and hearing handicapped, or hearing clinicians certified by the Department of Health. Such teachers shall have advanced training and experience.

(e) A register of approved facilities will be maintained by the department.

200.8 State assistance for the instruction of handicapped pupils pursuant to section 4406 of the Education Law.

(a) Approval of orders of the family court. An order of the Family Court which directs that special educational services be provided to a handicapped pupil may be approved by the commissioner, provided that satisfactory evidence is submitted to establish that:

(1) Such pupil is a handicapped child as defined by section 4401 of the Education Law and is not eligible for educational services pursuant to article 73, 85, 87, 88, or 89 of the Education Law; or

(2) Such pupil meets all the criteria of subdivision one of section 4401 of the Education Law except that the pupil is under school age of five and is not entitled to attend public schools without the payment of tuition pursuant to section 3202 of the Education Law and such pupil is also not eligible for educational services pursuant to article 73, 85, 87, 88, 89 of the Education Law.

(b) No order of the Family Court shall be approved with respect to any pupil who has not previously received State assistance pursuant to the provisions of sections 4406 and 4407 of the Education Law to attend such school, or any pupil who is to be enrolled in a private school which has not been approved by the department in accordance with provisions of sections 200.7 of this Part, unless appropriate notification has been received by the department on or before April 15 in the school year for which special educational services are sought. The provisions of this subdivision shall not apply to a pupil enrolled in a school subject to visitation by the commissioner pursuant to article 85 of the Education Law.

(c) Reimbursement by the State for tuition or maintenance pursuant to the provisions of Education Law section 4406 shall be in accordance with section 200.9 of this Part.

(d) Each voucher for payment by the State pursuant to the provisions of subdivisions (2) and (3) of section 4406 of the Education Law shall be submitted to the department by a county or city not later than 12 months from the date on which a certificate of approval for State aid was issued, or 12 months from the last day of the school year within which special educational services were provided, whichever is later.

Section 200.9 State reimbursement to private schools and special act school districts educating children with handicapping conditions who have been enrolled pursuant to Article 89 of the Education Law.

(a) Reimbursement to private schools and special act school districts receiving public funds for educating children with handicapping conditions will be on the basis of principles contained in this section, or a written contract entered into or approved by the commissioner including appendices to that contract.

(b) Local school district or local government contracts shall conform to the provisions of this section and Article 89 of the Education Law; school district or local government reimbursement to private schools pursuant to Article 89 of the Education Law shall be at the rate recommended by the commissioner and certified by the State Division of the Budget.

(c) Accounting requirements for private schools being reimbursed with public funds pursuant to Article 89 of Education Law.

(1) Schools shall keep accounts in accordance with generally accepted accounting principles (GAAP) as defined by the American Institute of Certified Public Accountants for independent profit and nonprofit schools except as modified by the commissioner in this section or by contract.

(2) Schools shall use accrual accounting. Each program approved for reimbursement with public funds pursuant to Article 89 shall have its own asset, liability and fund balance accounts, as well as expenditure and revenue accounts. An individual school may operate more than one program, but, where multiple rates are certified, separate revenue and expenditure accounts shall be maintained.

(3) Special act school districts shall keep accounts in accordance with applicable rules of the State comptroller, as supplemented by rules specified by the commissioner.

(d) Audits of private schools and special act school districts receiving public funds pursuant to Article 89 of Education Law.

(1) All private facilities shall be subject to audit by the State, local government or school district providing funds to that school. Where other state agencies or the agencies of other states are involved in the funding of approved facilities, any audits conducted by such agency shall be made available to the department upon written request to the facility.

(2) Audits of private schools may be conducted by the State as necessary. The audit may include all programs whose cost allocations are affected by programs approved pursuant to Article 89 of the Education Law.

(3) Schools shall reply to a draft State audit within 30 days of receipt. The draft audit may be considered final if no reply is received within 30 days. The school may submit written objections to the draft audit and/or request an oral hearing.

(4) After an audit becomes final, any monies owed by the school shall be paid within 60 days, unless the school and commissioner agree to a longer repayment period. If amounts that are to be repaid are substantial and result from good faith errors or interpretative differences, the commissioner may agree to such longer repayment periods as are reasonable under the circumstances. The commissioner will determine the method of repayment.

(e) Principles governing reimbursement rates to private schools receiving public funds pursuant to Article 89 of Education Law.

(1) The school year shall be from July 1 to the following June 30.

(2) Tuition rates for approved schools will be based on financial statements submitted in a form prescribed by the commissioner. Tuition rates will take into account approved program changes and increases in costs which have occurred after the year which the financial statement describes.

(3) Approved schools shall submit appropriate written justification for new positions or programs, which differ substantially from the special class programs as described in 200.6 (f) of this Part; schools seeking approval shall submit appropriate written justification for all positions and programs which differ substantially from the special class programs as described in 200.6 (f) of this Part.

(4) Charges to school districts shall be determined on the basis of allowable tuition costs, as determined by the commissioner with the approval of the Director of the Budget.

(5) Annual financial statements for the previous fiscal year shall be submitted to the commissioner and shall include:

(i) A balance sheet which describes assets, liabilities and net worth of all programs, including those funded through Article 89.

(ii) An income statement, or statement of profit and or loss for all programs, including those funded through Article 89.

(iii) A statement of changes in financial position for all programs, including those funded through Article 89.

(iv) Any notes which may be necessary to explain the statements required by subparagraphs (i) through (iii) of this paragraph.

(v) The information required in subparagraphs (i) through (iv) of this paragraph may be in the format which the school normally uses to provide year end financial reports, provided the information is for a July 1 to June 30 school year.

(vi) In addition, schools shall provide information which will allow analysis of revenues and expenses by function. Information shall be provided in the format specified by the State Education Department, including, but not limited to, a general program description, revenue statement, expenditure statement, enrollment data sheet, staffing data sheet, and independent public accountant's opinion.

(vii) Financial statements shall be prepared on an accrual basis and in accordance with generally accepted accounting principles as defined by the American Institute of Certified Public Accountants for independent profit and non-profit schools, except as modified by the commissioner.

(viii) Financial statements shall be certified by a public accountant independent of the school's daily operations.

(ix) Financial statements shall include separate cost centers for each location if a school operates programs in different locations, but shall provide a consolidated report for all locations.

(x) Financial statements shall be submitted as soon as possible following the close of the school year, but no later than October 1.

(xi) Schools shall retain all pertinent accounting records for a period of six years.

(xii) Special act school districts shall submit supplemental financial statement information as determined by the commissioner.

(6) Programs seeking initial approval may have tuition rates calculated on budgets submitted in a form prescribed by the commissioner. Budgets for summer schools seeking initial approval shall be submitted by April 15 prior to the summer for which funding is being sought.

(7) Within 30 days of receipt of written notice of a tentative tuition rate, schools may file objections to such rate on any grounds, in writing and/or may request an opportunity to make an oral presentation. The commissioner's final rate determination will accept or, upon denial, specifically respond to each objection raised by the school. Annually in September following the July in which reimbursement rates have been certified by the Division of the Budget, schools may request a modification of rates if there have been changes in the number of children enrolled or staff employed of greater than 10%, provided that such changes have been approved by the commissioner's designated program representatives. Modification may be requested based on emergencies, such as destruction of property by fire or on mandates of the commissioner's program representatives, at any time. All rates shall be subject to upward or downward adjustment based on allowable, actual, and necessary expenditures in a final audit.

(8) Calculation of student attendance.

(i) Reimbursement rates for private schools receiving public funding pursuant to Article 89 of Education Law will be based on a minimum of 30 days between July 1 and August 30 if a school chooses to operate during the summer, and for a minimum of 180 days between September 1 and June 30.

(ii) A pupil shall be deemed to be in attendance at an approved private school or facility during the period for which such pupil is enrolled at such school or facility. If any handicapped pupil is in attendance during the July through June school year for a period of less than the full ten-month school year, the amount which an approved private school or facility may charge for tuition shall be calculated, as follows:

(a) For each month during which such pupil continues in attendance, one-tenth of the allowable annual tuition rate.

(b) For less than one month of attendance, one quarter of one-tenth of the allowable annual tuition rate for each week of attendance, not to exceed four weeks in any one month provided that at least three days in a week shall be considered as one full week. In the event that a pupil leaves school during a month, no time of attendance shall be counted beyond the last week in which the pupils actually attends classes.

(9) Reimbursement to schools for the costs of buildings or facilities.

(i) For-profit schools which own their facilities.

(a) Reimbursement rates will include all reasonable and necessary property costs, including depreciation charges, interest on capital indebtedness, and operating costs as allowed by this part, commissioner's contract, or appendix to contract.

(b) In addition, such schools may claim an additional profit or surplus equivalent to 10% of equity allocable to Article 89 programs up to a maximum of $200 per child.

(ii) For-profit schools which are rented in arms-length transactions.

(a) An arms-length transaction means one entered into by independent and unrelated persons, in a competitive transaction, between a willing buyer and a willing seller.

(b) Reimbursement rates will include rental charges for real property up to a ceiling which is the average rent per square foot of commercial office space and apartment space as recorded by the New York State Office of General Services and the Federal Department of Housing and Urban Development. The commissioner may consider requests for necessary rent above such ceiling only if the school submits suitable evidence, such as independent appraisals of fair rental value, that no other suitable facility was available and that a move to another facility would severely disrupt the education of children at the school. Reimbursement rates for schools rented in arms-length transactions will also include operating costs as allowed by the commissioner.

(c) In addition, these schools may claim a profit equal to 10% of equity allocable to Article 89 programs up to a maximum of $200 per child.

(iii) For-profit schools which rent their facilities in less-than-arms-length or conflict of interest transactions.

(a) For purposes of this Part, a conflict of interest or less-than-arms-length transaction means one between anyone who serves as part of the management or as a volunteer or employee of the facility or any of the following relations of such persons: spouse, former spouse, child or descendent, parent or ancestor; sibling, or spouse of descendent, ancestor or sibling. Also included are dealings with partnerships of which such persons are partners or employees, or with corporations of which any such person is an officer, director or trustee, or in which any such person owns more than 10% of the stock.

(b) Reimbursement rates will include all reasonable and necessary property costs, including depreciation charges and interest on capital indebtedness. Actual property costs shall be reported. Reimbursement for actual property costs which are included in rent charges in less-than-arms-length or conflict of interest situations may be allowed up to a ceiling which is the average rent per square foot of commercial office space as recorded by the New York State Office of General Services and apartment space as recorded by the Federal Department of Housing and Urban Development. The commissioner may consider requests for necessary rent above this ceiling upon demonstration of severe need.

(c) In addition, a profit or surplus within the total figure charged for rent equivalent to 10% of school's equity allocable to Article 89 programs up to a maximum of $200 per child may be claimed.

(d) Reimbursement rates will also include operating costs as allowed by the commissioner.

(iv) Not-for-profit schools which own their facilities.

(a) Reimbursement rates will include all reasonable and necessary property costs, including depreciation charges and interest on capital indebtedness, and approved operating costs.

(v) Not-for-profit schools renting their facilities in arms-length transactions.

(a) An arms-length transaction means one entered into by independent and unrelated persons, in a competitive transaction, between a willing buyer and seller.

(b) Reimbursement rates will include rental charges for real property up to a ceiling which is the average rent per square foot of commercial office space as recorded by the New York State Office of General Services and apartment space as recorded by the Federal Department of Housing and Urban Development. The commissioner may consider requests for necessary rent above this ceiling only if the school submits evidence that no other suitable facility was available or that a move to another facility would disrupt the education of the children at the school. Reimbursement rates will include operating costs as allowed by this Part, the commissioner's contract, or appendix to contract.

(vi) Not-for-profit schools renting their facilities in less-than-arms-length or conflict of interest transactions.

(a) For purposes of this Part, a conflict of interest or less-than-arms-length transaction means one between anyone who serves as part of the management or as a volunteer or employee of the facility or any of the following relations of such persons: spouse, former spouse, child or descendent, parent or ancestor; sibling, or spouse of descendent, ancestor or sibling. Also included are dealings with partnerships of which such persons are partners or employees, or with corporations of which any such person is an officer, director or trustee, or in which any such person owns more than 10% of the stock.

(b) Reimbursement rates will include all reasonable and necessary property costs including depreciation charges and interest on capital indebtedness. Actual property costs shall be reported to the commissioner or his designated representatives. Reimbursement for actual property costs which are included in rent charges in less-than-arms-length or conflict of interest situations may be allowed up to a ceiling which is the average rent per square foot of commercial office space as recorded by the New York State Office of General Services and apartment space as recorded by the Federal Department of Housing and Urban Development. The commissioner will consider requests for necessary rent above this ceiling only if the school can demonstrate severe need.

(c) Reimbursement rates will include operating costs as allowed by this Part, commissioner's contract, or appendix to contract.

(10) Reimbursement of depreciation and interest costs on facilities, buildings or property.

(i) Annual depreciation expense will be allowed on buildings, furniture and fixtures, and equipment.

(ii) Depreciation on facility acquisition, construction or renovation will be calculated in accordance with the following provisions:

(a) Such depreciation shall be based on historical cost as recorded in the facility's accounting records.

(b) Such depreciation shall be calculated on the straight line method over 40 years, unless the school demonstrates to the commissioner or his designated representative that the useful life of the facility is less than 40 years. In no case shall facility acquisition or construction be depreciated over less that thirty three and one third years.

(c) Fiscal year expenditures for renovations or alterations up to a maximum of $10,000, will be considered minor capital expenditures for which prior approval is not required.

(d) Capital expenditures for land improvements (paved areas, fences, streets, sidewalks, utility conduits and similar improvements not already included in the cost of buildings) may be allowable provided the systematic amortization of such capital expenditures has been provided, based on reasonable determinations of the probable useful lives of the individual items involved, and the share allocated to programs funded pursuant to Article 89 of the Education Law is developed from the amount thus amortized for the base period involved. Amortization methods once used shall not be changed for given buildings or equipment.

(e) Where the depreciation method is applied to assets acquired in prior years, the annual charges therefrom shall not exceed the amounts that would have resulted had the depreciation method been in effect from the date of acquisition of such assets.

(f) Where a school elects to go on a depreciation basis for a particular class of assets, no depreciation, rental or use charge may be allowed on any such assets that, pursuant to clause (e) of this subparagraph, are determined by the commissioner or his designated representative(s) to have been fully depreciated.

(g) If a school acquires depreciable property by gift or bequest, depreciation will be allowed based on the market value at the time the gift was donated.

(h) New construction or renovation, or acquisition of a new facility shall be approved in writing by the commissioner's designated program and fiscal representatives or the representatives of another State agency providing reimbursement to the school. If no response is made within 60 days of receipt of a request for approval by the commissioner, such request for approval shall be deemed to have been granted.

(iii) Depreciation on furniture, fixtures, and equipment:
  (a) Shall be based on historical cost, as recorded in the facility's accounting records.
  (b) Shall be calculated on a straight line method.
  (c) Shall conform to Internal Revenue Service regulations regarding estimated useful life. Use of the Asset Depreciation Range (ADR) system average life shall be acceptable.
  (d) Shall be allowed for those items costing over $500 and whose use life is more than one year. However, if the value of minor items of this category total more than $2,500, they shall be subject to depreciation and not expensed during the year of acquisition.
  (e) If a school acquires depreciable furniture , fixtures, or equipment by gift or bequest, depreciation shall be allowed, based on market value at the time the gift was donated.
  (f) Shall be based on adequate property records on furniture, fixtures, and equipment and a periodic inventory taken to insure that properties for which depreciation is charged do exist and are needed.

(iv) Interest expense.
  (a) Schools may be compensated for necessary interest on capital indebtedness approved by the commissioner's designated fiscal representative(s) if such interest is not in excess of what a prudent borrower, as determined by the commissioner, would pay in the money market at the time the loan was made.
  (b) If the loan is from a lender related by control, ownership, affilitation or personal relationship to the borrower, the commissioner may set a level of reimbursement for approved interest on capital indebtedness which is lower than the rate which a prudent borrower would pay in the money market at the time the loan was made if the loan is from a lender related by control, ownership, affiliation or personal relationship to the borrower.

(11) Operating costs.
  (i) Amounts reimbursed by the State for personal services will include salaries, wages, fringe benefits and pension plan costs.
  (ii) Amounts reimbursed by the State for personal services shall be based on payrolls which have been prepared according to generally accepted accounting principles as determined by the American Institute of Certified Public Accountants for Independent Profit and Non-profit Schools. Payrolls shall be supported by time and attendance or equivalent records for individual employees. Salaries and wages of employees chargeable to more than one program or cost center must be supported by time distribution records.

(iii) Charges for staff work for programs other than those approved by the commissioner for children with handicapping conditions shall not be allowable.

(iv) Charges for part time employees shall be proportionate to the total compensation that would be paid if the person worked full time.

(12) Reimbursement of working capital interest. Schools may be compensated for interest on working capital if that capital was borrowed because of unreasonable delays in payments from State or local governments, provided that schools submit requests for payment on a timely basis. If interest costs are necessarily incurred as a result of unreasonable delays of scheduled contract payments by the State, school district, or local government, interest on such necessary borrowing may be charged to the State, school district, or municipality to the extent allowed by law.

(i) An unreasonable delay means 30 days after the date for payment specified in the contract with the State or local government or school district.

(ii) Schools which have serious cash flow problems because of late governmental payments, and which have insufficient reserves to cover operating costs, as justified to the commissioner's designated representatives in writing, may be reimbursed for interest costs on loans up to 10% of operating costs during the school year in which the governmental payment was overdue. Requests to be reimbursed for interest costs on loans which exceed 10% of operating costs shall be made in writing to the commissioner in advance of the borrowing.

(iii) Schools may be compensated for interest at a rate not in excess of what a prudent borrower, as determined by the commissioner, would pay in the money market at the time the loan was made.

(iv) To reduce the cost of interest borrowing to the State, schools may establish, upon written request to the commissioner's designated representative, a working capital fund from public money.

(a) Schools may set aside up to 5% of their total operating budget in any one year as a working capital fund provided that the school can demonstrate that its financial reserves are 15% or less of its annual allowable operating budget.

(b) The total amount of working capital funds obtained from public money shall not exceed 15% of annual allowable operating costs at any time.

(c) The working capital fund shall be administered according to procedures specified by the commissioner's designated representatives.

(d) Schools which have established working capital funds equivalent to 15% of annual allowable operating costs may not be reimbursed for interest on loans for working capital.

(e) Working capital funds may be used only to cover allowable costs as specified by the commissioner. Schools may request a written determination of allowable costs from the commissioner's designated representatives.

(f) The provisions of this paragraph shall be effective only through June 30, 1986 unless extended by the Board of Regents.

(13) The commissioner may accept reimbursement rates for out-of-state schools calculated by the State in which the school is located provided those rates have been approved by the State in which the school is located.

Section 200.10 Reimbursement to certain state-operated and state-supported schools for blind, deaf, and severely handicapped children pursuant to article 85, 87, and 88 of Education Law and Chapter 1060 of the Laws of 1974. Aidable operating expenses mean the necessary expenditures for approved educational programs provided to state-supported pupils and shall be determined in accordance with the following provisions:

(a) State-operated and state-supported schools shall submit annually, at times designated by the commissioner, budget forms containing justification for all proposed expenditures for which state aid is required. Such budgets shall indicate by line item all positions and items of proposed expenditure. All budgets in connection with other than department funded programs shall be reported on a supplemental sheet similar to the format for State-aided programs.

(b) All annual expenditures shall be justified to the satisfaction of the commissioner in accordance with the instructions accompanying the annual year-end report forms submitted by the state-operated and state-supported schools.

(c) All new positions requested in the annual budget shall be justified in a narrative statement attached to the budget request.

(d) Review of all budgets submitted by the state-supported schools will be guided by the expenditures at the state-operated schools for the deaf and blind. The portion of the salary of each employee which exceeds the salary of an employee having similar duties at the state-operated schools for the deaf and blind shall not be an aidable operating expense of such state-supported private schools, except that a location pay differential in the amount provided for in any contract or contracts between the State of New York and the certified or recognized employee organization or organizations representing State employees at the state-operated schools for the deaf and blind will be included as an aidable operating expense of schools located in the geographical areas to which such location pay differential applies.

(e) Budgets approved by the commissioner for a particular school year represent the maximum support for that year. State-supported schools shall limit items of expenditure and positions to those approved by the commissioner. Any transfer between line items of expenditure exceeding ten percent or $1,000, whichever is greater, of the approved budget authorization for the school year, shall have prior approval of the commissioner.

(f) Capital construction for new buildings, including related service facilities such as heating, sanitary, and lighting facilities, and improvement of grounds, and additions to accommodate growth of activity not a part of the State program will not be approved as State aidable operating expenses. Such equipment or furnishings as are necessary to accommodate or maintain the educational program for State-appointed pupils are aidable expenditures, with the prior approval of the commissioner. All necessary repairs, including replacement of roofs, boilers,

plumbing systems, installations of safety devices in existing buildings, such as proper exits, fire safety systems and renovation, considered necessary for maintaining generally accepted standards of instruction, living arrangements outside of the classrooms, protection of the health and safety of State-appointed students and the preservation of the physical plant may be approved, provided that application to the commissioner is made in advance of the incurring of any obligation. Emergency repairs not exceeding $2,500 may be made without prior approval, but the nature and extent of such repairs shall be promptly reported to the commissioner.

(g) Research activities, programs for non-State-appointed pupils and all other activities with accompanying income and expenditures determined not to be a part of the educational program offered to State-appointed pupils will not be considered in determining State support.

(h) The governing board, by resolution adopted during the fiscal year it received a gift or bequest, may restrict such funds for capital use or other programs which are not state-supported. The board may, by similar resolution, restrict such funds to provide merit supplements to the salaries of staff approved by the commissioner for State-appointed students. Such supplements shall be excluded from any overhead charges. Copies of the resolutions restricting the use of funds from private sources and annual income derived from such funds, and a designation of funds from private sources that have been restricted by the donor, shall be filed with the commissioner as part of the report of expenditures submitted for final payment.

(i) The submission of the claim for final payment shall be accompanied by a report of income and expenditures. Income shall include all funds from governmental agencies and private sources including income derived from capital assets. Expenditures shall include the cost of services and programs for State-appointed pupils as well as the cost of other services and programs administered by the school.

(j) State-operated and state-supported schools shall maintain adequate accounting records clearly setting forth the expenses allocable to approved programs and to those additional programs which are not subject to reimbursement.

(k) The accounting records of state-operated and state-supported schools shall be subject to audit and review at times designated by the commissioner and the Department of Audit and Control.

(l) All payments made to the state-operated and state-supported schools will be in accordance with actual expenditures incurred during the school year for which State payment is sought. Final expenditures are subject to audit by the Department of Audit and Control.

Section 200.11 Reimbursement to schools approved to provide educational services to deaf infants pursuant to section 4204-a of the Education Law.

(a) Payment for services. Approved facilities shall submit quarterly a voucher for educational services rendered in accordance with section 200.7 (c) (5) of this Part. Vouchers shall be accompanied by a record of each infant's attendance and a report of each infant's progress during the period for which payment is requested. Payments shall not exceed $20 for each session of at least 45 minutes of instruction offered to the infant or his parent. The accounting records of an approved facility which received State aid pursuant to the provisions of section 4204-a of the Education Law shall be subject to audit and review by the Department of Audit and Control.

(b) Those approved facilities which are eligible to receive financial assistance through the Department of Health for medicaid patients or for infants approved under the medical rehabilitation program shall seek such assistance for each infant. Infants who are eligible for reimbursement under private insurance or other public health agencies shall not be eligible for tuition assistance. Where educational programming for the deaf infant includes parent orientation sessions which are not eligible for support by the Department of Health or other State or local agencies, the facility may claim that support from the Education Department providing that the facility is approved pursuant to section 200.7 (c) (5) (iii) of this Part.

Section 200.12 Admission to public schools of children residing in facilities of the Office of Mental Health and the Office of Mental Retardation and Developmental Disabilities.

(a) Children residing in hospitals of the Office of Mental Health and schools of the Office of Mental Retardation and Developmental Disabilities shall be identified, evaluated and provided with special education and related services in accordance with the provisions of section 116.4 of this chapter. The committee appointed in each facility pursuant to subdivision (a) of section 116.4 of this charter shall recommend to the school district in which the facility is located that those children determined by the facility committee to be able to benefit from instruction in a public school program be admitted to the schools of such district.

(b) The school district committee on the handicapped shall review the recommendation of the facility's committee, and all relevant supporting information and data, to determine whether the school district has an educational program appropriate to the needs of each child so recommended, or whether an appropriate program can be provided by a board of cooperative educational services or another school district by agreement with the school district in which the facility is located. If the committee on the handicapped determines that the school district has an appropriate program for such a child, or can provide an appropriate program by agreement with a board of cooperative educational services or with another school district, such committee shall recommend to the board of education that the child be admitted to such program. In the event that the committee on the handicapped determines that there is no program appropriate to the needs of such a child in the schools of the district, or at a board of cooperative educational services or another school district, such committee shall report its findings to the board of education. If the committee on the handicapped concludes that placement in a private school for the handicapped is the appropriate educational placement for the child, the committee's report to the board of education may include a recommendation that the board of education recommend that the Office of Mental Health or the Office of Mental Retardation and Developmental Disabilities place such a child in a private, nonresidential school for the handicapped.

(c) If a board of education determines that there is no program appropriate to the needs of a child in the schools of the district, or at a board of cooperative educational services or another school district, the board of education shall give notice of such determination to the parent or person in parental relation to the child, if the identity of the parent or such person is available to the board, and to the chief administrator of the facility in which the child resides. Such notice shall also inform the recipients that review by the commissioner of education of the determination made by the board of education may be obtained in accordance with the provisions of Education Law section 310.

Section 200.13 State assistance for the transportation of handicapped pupils pursuant to section 4405 of the Education Law. An expenditure by a school district to provide suitable transportation during the period from September through June for a pupil with a handicapping condition to and from a private residential school located within or outside of the State, or to and from residential programs in schools enumerated in article 85, 87, 88, or 89 of the Education Law, shall be aidable provided that:

(a) The pupil was placed in such school in accordance with the provisions of article 85, 87, 88, or 89 of the Education Law, and

(b) The expenditure is for transportation from the pupil's home to the school at the commencement of the school year, from the school to the pupil's home at the conclusion of the school year, and no more than three additional trips to and from school during the school year, except as additional trips may need to be provided for the periods during which residential care is not provided to the pupils attending such school.

Section 200.14 Educational programs for autistic pupils.

(a) The functioning levels of autistic pupils, based upon the criteria set forth in paragraph 200.6 (f) (2) of this Part, shall govern their individual or small group instruction.
   (1) The continum of special education programs and services as described in section 200.6 of these regulations shall be available to autistic pupils as needed.
   (2) The chronological age range of instructional groups serving autistic pupils shall not exceed 36 months for pupils under age sixteen and shall not be limited for pupils sixteen years of age or older.
   (3) The class size for such pupils shall be determined in accordance with subdivisions (e) and (f) of section 200.6 of this Part, provided that the class size of special classrooms composed entirely of autistic pupils shall be in accordance with section 200.6 (f) (4) (ii).
   (4) Instructional services shall be provided to meet the individual language needs of an autistic pupil for a minimum of 30 minutes daily in groups not to exceed two, or 60 minutes daily in groups not to exceed six.
   (5) To the maximum extent appropriate, instructional provisions shall be instituted for eventual inclusion of autistic pupils into resource room programs for pupils with combined handicapping conditions or placement in a regular classroom.
   (6) In those instances where a pupil has been placed in programs containing pupils with other handicapping conditions, or in a regular class placement, a special education teacher with a background in teaching autistic pupils shall provide transitional support services in order to assure that the pupil's special educational needs are being met.

(b) The length of the school day for autistic pupils shall be that set forth in section 175.5 of this chapter.

(c) All school districts are required to furnish appropriate educational programs for autistic pupils from the date they become eligible for a free appropriate public education until they obtain a high school diploma or until the end of the school year in which they attain their 21st birthday, whichever occurs first.

(d) Provision shall be made for parent counseling and education for the purpose of enabling parents to perform appropriate follow-up intervention activities at home.

(e) Upon application and justification to the commissioner, approval may be granted for variance from special class sizes and the chronological age ranges specified in subdivision (a) of this section.